



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-127

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

In s. NR 51.004 (5), the rule is amended so that under the circumstances specified, “title to the land shall vest in the department,” instead of to the state. Section 23.096 (5), Stats., specifies that title shall vest in the state. Although it may be a distinction without a difference to change “state” to “department,” the statute does specify that title must revert to the state. A similar issue occurs in s. NR 51.968 (2) (a) and (3).

2. Form, Style and Placement in Administrative Code

a. The use of cross-references in the rule preface should be reviewed. For example, in the rule preface discussion of SECTION 22, the notation “ss.” should be replaced by the notation “s.”, because the citation is in the disjunctive. In the discussion of SECTIONS 64, 70, 79, and 83, the notation “ss.” should be replaced by the notation “s.”, because only one section is mentioned. The entire rule preface should be reviewed for similar problems.

b. In the table of contents, the title to s. NR 51.34 does not appear to be amended in the text of the rule. Also, the titles in the table of contents for ss. NR 51.952, 51.954, 51.968, 51.975, and 51.976 and subchapter XVIII are not consistent with the titles used in the text of the rule. Also, all the section titles in the rule should begin with a capital letter and the rest of the title should be shown in lowercase.

c. In s. NR 51.002 (1), the third-to-last sentence should begin with the phrase “‘Acquisition cost’ does not include....”

d. In s. NR 51.002 (2m), the phrase “the state of Wisconsin” should be replaced by the phrase “this state.”

e. In s. NR 51.002 (2m), “Stewardship” should be changed to the lowercase. This problem also occurs in subs. (28) and (29m) and the entire rule should be checked for this problem. Also, “government” should be changed to “governmental” and “U.S. Government” should be changed to “U.S. government.”

f. In s. NR 51.002 (3m), “Comprehensive Outdoor Recreation Plan (CORP)” should be changed to “Comprehensive outdoor recreation plan” or “CORP.” Also, the phrase “A CORP” should begin with the acronym CORP and the acronym should be placed within quotation marks.

g. In s. NR 51.002 (26e), the word “Value” should be replaced by the word “value.” The entire rule should be reviewed for this problem; only the first word of a defined term should be capitalized.

h. In s. NR 51.002 (32), the second and third occurrences of the word “tribe” should be shown in lowercase.

i. In s. NR 51.005 (5), the phrase “shall be responsible for operation and maintenance of” should be replaced by the phrase “shall operate and maintain.”

j. In s. NR 51.005 (13), “shall not” should be changed to “may not.” This problem also occurs in s. NR. 51.006 (6) (a) and the entire rule should be checked for this problem. Also, the phrase “sponsors that violate” should be replaced by the phrase “A sponsor that violates.”

k. In s. NR 51.006 (1), the correct citation is “ss. 23.0917 (4m) (i) and (j) and 23.096 (2m), Stats.” The citations throughout the rule are not consistent. They should be reviewed and corrected where necessary in order to follow the format supplied in s. 1.07 (2), Manual. Also, in the last sentence of sub. (1), the word “must” should be replaced by the word “shall.”

l. In s. NR 51.006 (3) (b), “can” should be changed to “may.”

m. In s. NR 51.006 (4), the phrase “effective date of this rule” should be replaced by the phrase “effective date of this subsection ... [LRB inserts date].”

n. Section NR 51.007 (5) should be rewritten to read: “A sponsor that fails...to apply for a future grant under this chapter until it corrects....”

o. In s. NR 51.03 (3), the phrase “of this chapter” is unnecessary and should be deleted.

p. In s. NR 51.04 (1) (b) (intro.), the word “above” is unnecessary and should be deleted. Further, the phrase “all of” should be inserted before the phrase “the following.” The entire rule should be reviewed for the appropriate use of phrases such as “any of” and “all of” in introductory material in order to clearly indicate to the reader whether any or all of the following subunits must be met.

q. In s. NR 51.04 (2) (a) 1., the word “should” should be replaced by the word “shall.” Also, the acronym “NCO” should be defined.

r. In s. NR 51.04 (2) (am), the words “Department” and “Federal” should be shown in lowercase. A similar comment applies to the term “Boards of Directors” in sub. (2) (b). The entire rule should be reviewed for the appropriate use of the word “department.”

s. In s. NR 51.06 (2), it is not clear what amendment is being made.

t. In s. NR 51.07 (3) (f), the word “must” should be replaced by the word “shall.”

u. In s. NR 51.22 (6m), the second sentence should be placed in a note.

v. The material in s. NR 51.25 (2) (a) should be repealed and recreated instead of amended and s. NR 51.25 (b) and (c) should be created in a separate section. [See s. 1.06, Manual.] In sub. (2) (b), “Natural Heritage Inventory” should be changed to the lowercase. This problem also occurs in s. NR 51.26 (3) (a). In sub. (2) (c), the slashed alternative “and/or” should be deleted; the department should determine whether the sentence means “and” or “or” and use the appropriate word. This problem also occurs in ss. NR 51.26 (3) (b) and 51.72 (2m).

w. In SECTION 58, the text of s. NR 51.42 (1) should be deleted because this section is only being renumbered.

x. Section NR 51.63 (3) (intro.) should not be amended to add the word “above.” It is unnecessary.

y. Section NR 51.904 (3) should be placed in a note.

z. Section NR 51.944 (1) should begin with the phrase “A project that is.”

aa. In s. NR 51.950, “Heritage Fund” should be changed to the lowercase.

bb. In s. NR 51.952 (2) (intro.), the phrase “, but are not limited to” is unnecessary and should be deleted.

cc. In s. NR 51.954 (3) (a), the citation “s. 51.954 (2)” should be replaced by a citation to “sub. (2).”

dd. In SECTION 166, “NR 51.952” should be changed to “NR 51.954.”

ee. In s. NR 51.960 (1), “chapter” should be changed to “subchapter.” See also s. NR 51.961 (2), which also should conclude with a period.

ff. Section NR 51.962 (3) should not use incomplete sentences unless they are preceded by an appropriate introduction. [See also s. NR 51.973.] Also, in sub. (4) (a), the word “must” should be replaced with “shall” and subd. 3. should conclude with a period. In par. (a) 6. and 7., the notation “Stats.” should be inserted after the reference to “s. 28.11 (5) (a).” Finally, in par. (b), the word “must” should be replaced by the word “shall.”

gg. In s. NR 51. 967 (2), the word “must” should be replaced by the word “shall.”

hh. In s. NR 51.972, the word “who” should be replaced by the word “that” and the phrase “Secretary or its designee” should be replaced by the phrase “secretary of his or her designee.” [See also NR 51.975 (1) (a) 6.]

ii. In s. NR 51.975 (1) (a) 5., the word “Real” should be replaced by the word “A real.” In sub. (2) (intro.), the word “must” should be replaced by the word “shall.”

jj. In s. NR 51.984 (1), “(1)-(9)” should be changed to “(1) to (9).”

kk. In s. NR 51.987, the word “Grant” should be replaced by the phrase “A grant under this subchapter.” Also, the words “Waterways” and “Commission” should be shown in lowercase.

4. Adequacy of References to Related Statutes, Rules and Forms

In s. NR 51.03 (4), “s. 23.0916 (2m), Stats.” should be changed to “s. 23.096 (2m), Stats.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the rule preface discussion of SECTION 10, the phrase “Tribes are” should be replaced by the phrase “a tribe is.”

b. In the rule preface discussion of SECTION 26, it appears that the word “all” should be deleted.

c. In the rule preface discussion of SECTION 52, it appears that “claries” should be replaced by the word “clarifies” and the word “high” should be replaced by the word “higher.”

d. In the rule preface discussion of SECTION 93, it appears that “claries” should be replaced by the word “clarifies.”

e. In the rule preface discussion of SECTION 51, the word “chapters” should be replaced by the word “subchapters.”

f. In s. NR 51.002 (31), it appears that the phrase “of Tribe” should be deleted.

g. In s. NR 51.006 (2), it appears that the first note is not needed and may be confusing.

h. In s. NR 51.03 (3), the rule should clarify what an “eligible governmental unit” is. In addition, “as outlined in” should be changed to “as required under.”

i. In s. NR 51.85 (4), it is unclear what “friends groups” are. The department should provide a definition of this term in the rule or provide a cross-reference to a definition that already exists.

j. In s. NR 51.926 (1) (intro.), “when,” from the current rule text, should be stricken-through.

k. The treatment in SECTIONS 160, 161, and 162 is confusing; the department should review these sections to make sure they comply with the department’s intent.

3.
 - l. Section NR 51.961 (2) should conclude with a period. See also s. NR 51.962 (4) (a)
 - m. In s. NR 51.962 (4) (a) 5., “department approved” should be changed to “department-approved.”
 - n. In s. NR 51.984 (1), the hyphen should be replaced by the word “to.”